

**GREEN SQUARE INC.  
AGREEMENT TO PROVIDE  
PROFESSIONAL TENNIS  
MANAGEMENT AND OPERATIONS  
SERVICES AT THE CITY'S FLAMINGO  
TENNIS CENTER**

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**AGREEMENT BETWEEN  
CITY OF MIAMI BEACH, FLORIDA AND GREEN SQUARE, INC.  
FOR TENNIS MANAGEMENT AND OPERATIONS SERVICES  
AT THE CITY'S FLAMINGO TENNIS CENTER**

THIS AGREEMENT made the 10th day of April, 2002, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (hereinafter called "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **GREEN SQUARE, INC.**, a corporation of the State of Florida, with offices at 4500 Royal Palm Avenue, Miami Beach, Florida 33140 (hereinafter called "Contractor").

**WITNESSETH**

**WHEREAS**, on June 8, 2001, Request for Proposals No. 8-00/01, for Professional Tennis Management and Operation Services at the City's Flamingo and/or North Shore Tennis Park Centers (the RFP) was issued with a due date for submission of proposals of July 17, 2001; and

**WHEREAS**, on January 9, 2002, the Mayor and City Commission accepted the recommendations of the City Manager and authorized the Administration to enter into negotiations with CONTRACTOR, as the most qualified proposer pursuant to the RFP, to manage and operate the Flamingo Tennis Center (the Center); and

**WHEREAS**, the Administration and the principals of CONTRACTOR have been meeting to negotiate the terms of this Agreement; and

**WHEREAS**, these meetings have successfully concluded with the terms and conditions stated herein, as the basis of the Agreement for the comprehensive professional tennis management and operations services at the Center.

**NOW THEREFORE**, in consideration of the Premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The City hereby grants to the CONTRACTOR, and the CONTRACTOR hereby accepts from the City, the exclusive right to operate and manage the Center, as defined herein, in conformance with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained.

**SECTION 1. TERM.**

- 1.1 This Agreement shall be for an initial term of three (3) years, commencing on April 15, 2002 (the "Commencement Date"), and ending on April 14, 2005.
- 1.2 Notwithstanding subsection 1.1 above, the City shall have the option to terminate this Agreement at the conclusion of the second year, at its convenience and without cause or penalty.

- 1.3 The City shall have the right, at its sole option and discretion, and provided further that CONTRACTOR is in good standing under the Agreement to renew this Agreement for two (2) additional one-year terms. CONTRACTOR shall provide City with written notice of its intent to be considered for renewal of the Agreement no earlier than ninety (90) but no later than sixty (60) days prior to the expiration of the initial term, or any exercised option term, as the case may be; which renewal shall be at the City's discretion.

In the event of any renewal of this Agreement, the City reserves the right to renegotiate any and all terms contained herein.

- 1.4 Notwithstanding any term contained in this Section, whether in the initial term or a renewal term(s), as the case may be, the CONTRACTOR acknowledges that the City intends to develop a schedule of capital improvements for the Center, which during the term of this Agreement, may entail a closure of all, or a portion of, the Center, at the City's sole discretion. In the event that the City closes down the Center for the purpose of undertaking a capital improvement plan thereon, then the parties agree that this Agreement and the Agreement term may be suspended until the capital improvements are completed and the Center is reopened. In the event that the City determines to close the Center, as provided herein, it shall as a courtesy provide at least ninety (90) days prior written notice to CONTRACTOR of same, and said suspension of the Agreement shall become effective upon the date specified in said notice. CONTRACTOR, as a result of the closure of the Center, as provided herein, shall upon receipt of notice from the City, coordinate said suspension with the City's Parks and Recreation Department such that the services contemplated herein are continued to be provided up to the closure of the Center, and an orderly transition occurs.

## **SECTION 2. CENTER TO BE MANAGED:**

- 2.1 The City has employed the CONTRACTOR to operate, manage and maintain, and CONTRACTOR agrees to same, the following recreation facility (hereinafter referred to as the Center):

That certain City-owned recreational facility commonly known as the Flamingo Tennis Center, located at 11<sup>th</sup> Street and Jefferson Avenue, together with all buildings, improvements and fixtures located thereon; provided that the Holtz Stadium VIP building shall be exclusively reserved and available for the use of the City's Recreation Division from June 1<sup>st</sup> to September 1<sup>st</sup> each year, for its Summer Camp programs. The Center's premises included are further delineated in Exhibit "B" (Site Map of Center), attached hereto.

- 2.2 CONTRACTOR herein accepts the Center in its "as is" condition with all buildings, improvements and fixtures, and agrees that the City shall have no obligation to improve, repair, restore, refurbish, or otherwise incur any expense in improving or changing the condition of the Center at any time during the term of this Agreement, unless as agreed upon by the City.

Prior to the Commencement Date, City and CONTRACTOR shall coordinate a meeting and site inspection of the Center to establish a baseline of existing conditions. Contractor shall notify the City of any necessary repairs, and the City shall make such repairs if, in its discretion, it deems necessary.

- 2.3 This Agreement is subject to all existing utility lines or facilities, rights of way, and ingress and egress to City-retained areas, and the City's right to replace and/or maintain same, whether or not such matters have been recorded in the Public Records of Miami-Dade County, Florida. This shall include, but not be limited to, any and all underground and aboveground utilities located on the Center. The City also reserves the right to construct, install and maintain utilities that it deems, in its sole discretion, to be necessary or beneficial to the operation of the City. City agrees to give CONTRACTOR reasonable notice prior to commencing any such construction, installation, or maintenance of utilities that may result in a temporary closure of a court or courts, or any other portion of the Center. CONTRACTOR reserves the right to cancel or otherwise close all other portions of the Center including specific banks of courts, until such time as the work is completed or the closed Center or portion thereof can be re-opened, whichever comes first. Any disturbance or damage to City-owned or City-authorized utilities located on, under, or over the Center, caused as a result of CONTRACTOR'S negligence, shall be promptly repaired at CONTRACTOR'S expense.

### **SECTION 3. USE (S).**

The CONTRACTOR is hereby authorized to conduct the following kind(s) of businesses and provide the following kind(s) of services within the Center, as provided below; all at its sole cost and expense:

#### **3.1 Public Tennis Facility**

CONTRACTOR agrees it will use the Center solely for the operation of a public tennis facility. This use shall include the operation of the tennis courts, pro shop, food and beverage concession facilities, as shall be approved by the City, and CONTRACTOR'S office. Services shall include those customarily associated with the operation of a public tennis center, including permitted Special Events (as defined in Section 16) related to such public tennis center activities, and those specifically included in the Request for Proposals No. 8-00/01, Scope of Services, attached hereto as Exhibit "C".

No other use and/or business shall be conducted at the Center without the prior written approval of the City Manager or his designee.

3.1.1 The City and CONTRACTOR agree and acknowledge that the public's use of the Center is a prime consideration and must be balanced accordingly with the services to be provided by the CONTRACTOR to the public and the respective financial remunerations to City and CONTRACTOR, respectively, pursuant to this Agreement. Accordingly, CONTRACTOR acknowledges and agrees that the public's right to use the Center shall not be infringed upon by any activity or CONTRACTOR other than as set forth in this Agreement. Upon execution of the Agreement,

CONTRACTOR acknowledges that the Center is public and as such its operation may not restrict, or appear to restrict, access to the general public, or in anyway limit the public nature or ambiance of the Center other than as set forth in this Agreement. CONTRACTOR will conduct its operations so as to maintain a reasonably quite and tranquil environment for the adjacent area, and make no public disturbances.

It is the City's intent, and CONTRACTOR hereby agrees and acknowledges same, to provide high-quality, affordable tennis services to the City's residents and visitors; to meet the demands of its hotel community for access to high quality tennis facilities within Miami Beach; and to progressively upgrade tennis service at the Center.

### **3.2 Prohibited Activities**

CONTRACTOR shall not use the Center for any unlawful purpose and shall comply with all laws and permitting requirements now in force or hereafter adopted, applicable to the Center, and/ or uses and businesses conducted on the Center. CONTRACTOR agrees not to use the Center for, or to permit the operation of any offensive, noisy or dangerous activity, nuisance or anything against public policy. There shall be no living quarters at the Center, nor shall anyone be permitted to live at the Center. Except as may result from acts of force majeure, CONTRACTOR agrees that it will not allow the Center to become unoccupied or vacant. CONTRACTOR shall take appropriate precautions to prevent fire on the Center; maintaining existing fire detection devices and extinguishing equipment at all times. CONTRACTOR will not permit the outside use of any musical instrument or noise-making device on the Center that is in violation of the City's established Noise Ordinance.

### **3.3 Food and Beverage Service**

3.3.1 As authorized by the City, the CONTRACTOR shall prepare, or cause to be prepared, for sale within City-approved locations within the Center, such cooked, prepared, and/or prepackaged foods and such non-alcoholic beverages, as approved by the City Manager or his designee.

3.3.2 All food and beverage service to be offered must have the prior written authorization of the City. The City Manager or his designee shall approve, in writing, the types of food and beverages, and prices for same, to be sold at the Center, prior to such sale; and shall further approve any changes, whether as to type of food and beverages to be sold, or as to changes in prices, in writing, prior to implementing a change. Prior to the Commencement Date or, if later, prior to the sale of any food and beverages at the Center, CONTRACTOR shall submit a written list (or menu) indicating the types of food and beverages to be sold, and prices for same. CONTRACTOR shall be solely responsible for updating and maintaining a current list (menu) of all food and beverages, and prices for same, throughout the term of this Agreement.

- 3.3.3 All food and beverages sold at the Center will be properly prepared and served in compliance with all applicable health and sanitary standards. The quality of food, food costs, and service shall be comparable to other municipal tennis centers in the Miami-Dade County area. All food and beverage dispensing facilities shall be approved by the City and shall be maintained in a clean and sanitary manner. All food and beverages sold will be intended for consumption on the Center premises, and shall be dispensed from inside the Center. Food and beverage containers for items permitted to be taken outside approved dispensing facilities will be subject to regulation by the CONTRACTOR for the purpose of controlling and preventing litter.
- 3.3.4 Food and beverage services shall be offered to patrons at all times as a reasonable demand for such service exists. All required licenses, permits and other certifications necessary to provide food and beverage services must be obtained and maintained by the CONTRACTOR at its sole cost.
- 3.3.5 At least one supervisory employee of CONTRACTOR must possess a Food Service Management Certification issued by a County Public Health Department in Florida, as required by law. In addition, CONTRACTOR must obtain all licenses required by the Florida Department of Business Regulation, Division of Hotels and Restaurants, the Department of Agriculture and/or as may further be required by State law, and as required by corresponding agencies to sell the food or beverages that CONTRACTOR is authorized to sell.
- 3.3.6 The City Manager or his designee may allow cooking and heating at the Center but only for Special Events, as defined in Section 16, or upon CONTRACTOR obtaining the prior written consent of the City. For purposes of this subsection 3.3, "cooking and heating" shall not include a prohibition against food that is prepared or re-heated in a microwave and/or hot beverages such as coffee and tea.
- 3.4 Sale of Tennis Pro Shop Related Items and Services.  
CONTRACTOR may offer for sale those tennis related items such as tennis balls, tennis racquets, shoes, shirts, towels, etc., and offer related services such as equipment and ball machine rentals, racquet restringing, and grip replacement. Prices shall be substantially in accordance with the price ranges of other similar public tennis centers. A list of all items and services to be offered for sale, and the respective price ranges for same, must be approved in writing by the City Manager or his designee, prior to such sales and/or additions being implemented, and updated, as deemed necessary, at the discretion of the City Manager and/ or his designee.
- 3.5 Hurricane Evacuation Plan.  
CONTRACTOR agrees to comply with the City's Hurricane Evacuation Plan and will cooperate fully with the instructions given by the City's representative to initiate the plan immediately upon notice of the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management. CONTRACTOR shall, at a minimum, secure the Center and all related materials in accordance with the



procedures included in the City's Recreation Division Hurricane Evacuation Plan, as included in Exhibit "D," attached hereto.

**3.6 Occupational Licenses.**

CONTRACTOR shall obtain, at its sole cost and expense, any and all occupational licenses required by law, as amended from time to time, for all proposed uses contemplated in this Agreement. Occupational licenses shall also be required and obtained for each individual professional tennis instructor providing lessons and / or clinics at the Center.

**SECTION 4. Financial Requirements**

**4.1 Performance Bond or Alternative Security.**

4.1.1 On or before the Commencement Date, CONTRACTOR shall furnish the City Manager or his designee with one of the following:

- (i) A Performance Bond, in the amount of One Hundred Thousand Dollars (\$100,000.00), to secure the faithful performance of this Agreement. A cash deposit, irrevocable letter of credit, the establishment of a joint trust or certificate of deposit (collectively, the "Alternate Security") may also suffice, as determined by the City in its discretion. The form of the Performance Bond or Alternate Security shall be as required and pre-approved by the City Manager or his designee. In the event that a Certificate of Deposit is approved, it shall be a One Hundred Thousand Dollar (\$100,000.00) one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by City. The CONTRACTOR shall be required to maintain said Performance Bond or Alternate Security, as accepted by City, in full force and effect throughout the Term of this Agreement.
- (ii) A letter, in a form satisfactory to the City Manager or his designee, from a federally insured financial institution evidencing, as of the date of the letter, CONTRACTOR'S ability to provide the necessary funds to perform pursuant to the Agreement.

The parties agree and acknowledge that the preceding conditions (i)-(ii) are intended to be conditions subsequent to the City's approval of this Agreement. Accordingly, in the event that CONTRACTOR does not satisfy the aforestated conditions on or before the Commencement Date, then the City Manager or his designee may immediately, without further demand or notice, and without liability to the City, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

**4.2 Payment of Expenses/ City's Minimum Guarantee/ Payment to Contractor.**

In consideration of the management and operational rights granted the CONTRACTOR pursuant to this Agreement, and CONTRACTOR'S further agreement and acknowledgement to perform and furnish the management and operational services; professional skills and qualified personnel; systems; and

materials consistent with the management and operations of other first class public tennis centers, the City and CONTRACTOR herein agree that the CONTRACTOR shall collect and maintain (in accordance with generally acceptable accounting principles) on behalf of the City, all revenues, as such term is defined in subsection 4.2.3, generated at and from the Center including, but not limited to, all tennis instruction, lessons and clinics; court rental fees, sales, equipment rental, pro shop sales, and the sale and operation of a food and beverage concession.

All said revenues collected by the CONTRACTOR shall be deposited into an account of the City established pursuant to this Agreement, and to be maintained solely for the purpose(s) of the management, operation and maintenance of said Center including, without limitation, to pay for all budgeted operational expenses arising from the management or operation of the Center. Interest accrued in the account shall be part of the operating income.

Except as provided in subsection 4.2.2, CONTRACTOR is authorized to withdraw from such account amounts necessary to pay, or reimburse CONTRACTOR, for the payment of all budgeted operational expenses arising from the management and operation of the Center, including its management fee, as set forth in the approved operating budget, as set forth in 4.2.4, during the term of this Agreement, but, in the case of the management fee, on no more than a bi-weekly basis (except as otherwise approved by the City's Finance Director).

CONTRACTOR shall submit, within twenty-five (25) days following the close of each month, or as reasonably prescribed by the City, copies of records and reports related to the receipts and expenditures with respect to all expenses and revenues generated during such month at the Center. Such records and reports shall be in a form satisfactory to the City's Finance Director, and shall include a comparison of revenues and expenses for the two (2) months prior to the report being submitted. The City shall review all operating expenses but shall have no obligation whatsoever to reimburse CONTRACTOR for any cash flow deficiencies.

CONTRACTOR, upon receipt thereof from the depository bank, shall submit to the City copies of all deposits, withdrawals, and bank statements concerning the account established for the Center pursuant to this subsection 4.2. Additionally, there shall be a reconciliation of all accounting within 15 working days following the completion of each Agreement year (April 15<sup>th</sup> – April 14<sup>th</sup>) during the term hereof.

- 4.2.1 Notwithstanding anything to the contrary in this subsection 4.2, the City shall without limitation withdraw, on the last work day of each month during the term of this Agreement, the following amounts: for the months of May through October 2002, 10% of the gross revenues for the Center from the preceding calendar month, or portion thereof, and for the months of November 2002 through May, 2005, the greater of (i) the percentage of gross revenues for the preceding calendar month, or portion thereof, as set forth in Exhibit A to this Agreement; or (ii) \$4,000, whichever is greater.

4.2.2 CONTRACTOR'S right to make withdrawals of its management fee from the City account, as set forth in this subsection 4.2, shall be subject to the withdrawal rights of the City's payment, as set forth in subsection 4.2.1. CONTRACTOR shall not make any withdrawals from the City account for its management fee if such withdrawal would result in a balance in the City account that is equal to or less than the monthly amount the City is entitled to withdraw that month pursuant to this subsection.

4.2.3 The term "gross revenues" or "revenues," as used herein, is understood to mean all income collected or accrued by the CONTRACTOR with respect to the Center pursuant to this Agreement, excluding amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the CONTRACTOR pursuant to this Agreement, and required by law to be remitted to the taxing or other governmental authority.

4.2.4 During the term of this Agreement, CONTRACTOR shall prepare and submit to the City, prior to October 1<sup>st</sup> of each fiscal year or portion thereof that is within the term hereof, a proposed, detailed line-item annual operating budget for the Center, in compliance with a format reasonably requested by the City's Finance Director. CONTRACTOR shall also prepare and submit, prior to October 1<sup>st</sup> of each fiscal year that is within the term hereof, a cash flow budget, based on its submitted operating budget for such fiscal year. The operating budget and the cash flow budget shall be approved by the Finance Director, with such modifications as the Finance Director shall make.

4.3 Sales and Use Tax.

It is also understood that payment of any required Florida State Sales and Use Tax shall be the responsibility of CONTRACTOR. It is the City's intent that it is to receive all payments due from CONTRACTOR (as contemplated in 4.2.1) as net of such Florida State Sales and Use Tax.

SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.

CONTRACTOR shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, but not photocopying, by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of revenues, expenses, and profit and loss statements. CONTRACTOR shall maintain accurate receipt-printing cash registers or a like alternative at the Center which will record and show the payment for every sale made or service provided on the Center; and such other records

shall be maintained as would be required by an independent CPA in order to audit a statement of annual revenues and profit and loss statement pursuant to generally accepted accounting principles.

## **SECTION 6. INSPECTION AND AUDIT**

CONTRACTOR shall maintain its financial records pertaining to its operations for a period of three (3) years after the conclusion of any contract year and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee, but shall not be subject to photocopying.

CONTRACTOR shall maintain all such records at its principal office, currently located at 4500 Royal Palm Avenue, Miami Beach, Florida 33140 or, if moved to another location outside the City of Miami Beach, all such records shall be relocated, at CONTRACTOR'S expense, to a location in Miami Beach, within ten (10) days' written notice from the City.

The City Manager or his designee shall be entitled to audit, but not photocopy, CONTRACTOR'S records pertaining to its operation as often as it deems reasonably necessary throughout the term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in CONTRACTOR'S statement of revenues for any year or years audited, in which case CONTRACTOR shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until CONTRACTOR has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. Nothing contained within this Section shall preclude the City's audit rights for resort tax collection purposes. CONTRACTOR shall submit at the end of each contract year, an audited annual statement of revenues, in a form consistent with generally accepted accounting principles.

It is CONTRACTOR'S intent to stay informed of comments from and suggestions by the City regarding CONTRACTOR'S performance under the Agreement. Within thirty (30) days after the end of each contract year, CONTRACTOR and City shall meet to review CONTRACTOR'S performance under the Agreement for the previous contract year. At the meeting, CONTRACTOR and City may discuss quality, operational, maintenance and any other issues regarding CONTRACTOR'S performance under the Agreement.

## **SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES**

- 7.1 CONTRACTOR agrees to and shall pay before delinquency all taxes (including but not limited to resort taxes) and assessments of any kind assessed or levied upon CONTRACTOR and with and/ or against the Center, except as provided in subsection 7.2, by reason of this Agreement or by reason of the business or other activities of CONTRACTOR upon or in connection with the Center. CONTRACTOR will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently

conducted in good faith.

CONTRACTOR may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, CONTRACTOR shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment, if so ordered.

CONTRACTOR shall also pay for any fees imposed by law for licenses or permits for any business or activities of CONTRACTOR at the Center under this Agreement.

CONTRACTOR shall pay before delinquency any and all charges for utilities used by, for, or on behalf of the operations contemplated herein including, electricity, gas, heating, cooling, trash collection, business telephone, etc. Format of billing procedures shall be developed and agreed upon between the City and the CONTRACTOR. The City shall maintain and pay for its local service (2 lines) currently in the Center for a period of no less than one year from the Commencement Date, for continuity and convenience of its residents, and for the water and sewer used at the Center during the term of this Agreement.

**7.2 Procedure If Ad Valorem Taxes Assessed.**

Notwithstanding Subsection 7.1, the parties agree that the operations contemplated herein are for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, said taxes are assessed, City and CONTRACTOR shall use reasonable efforts to address payment of same.

**SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS**

8.1 CONTRACTOR agrees that during the Term of this Agreement, Jim Bollettieri and Tom Mar (individually, a "Principal"; collectively, the "Principals") shall have active, ongoing direct participation in the day to day operation, maintenance and management of the Center. In the event that a Principal (or Principals) is no longer associated with CONTRACTOR, or otherwise ceases to participate in the day to day operation, maintenance, and management of the Center pursuant to this Agreement, then the City, at its sole option, may terminate this Agreement for cause pursuant to Section 14. In the alternative, should the City not opt to terminate this Agreement as provided therein, it shall have prior written approval as to any replacement of a Principal or Principals subsequently offered by the CONTRACTOR.

8.2 In connection with the performance of its responsibilities hereunder, CONTRACTOR may hire its own employees and/or independent contractors, who will be employees and/or independent contractors of CONTRACTOR and not of the City. CONTRACTOR shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to such employees and/or independent contractors.

- 8.3 The CONTRACTOR agrees that the Head Tennis Professional who is, as of the Commencement Date, identified as Greg Yocum, and all Teaching Assistants, shall be certified Tennis Professionals by USPTA, or USTA, USPTR. The Head Tennis Professional, Center Managers, and Principals must demonstrate knowledge and experience in tennis instruction and related activities, facility management, tennis court maintenance and related activities.
- 8.4 CONTRACTOR and its employees and/or independent contractors shall wear appropriate apparel, such that Center patrons can easily identify CONTRACTOR and its employees and/or independent contractors. All employees and/or independent contractors shall observe all the graces of personal grooming. The CONTRACTOR shall hire people to work in its operation who are neat, clean, well groomed and shall comport themselves in a professional and courteous manner. The CONTRACTOR and any persons hired by same, shall comply with the pre-employment requirements and standards as established by the City of Miami Beach's Human Resources Department. If CONTRACTOR materially fails to comply with these provisions the City may send notice of default. The CONTRACTOR shall have an experienced manager or managers overseeing the Center and related operations at all times Center is open to the general public.
- 8.5 The CONTRACTOR, all its employees and/or independent contractors shall undergo a comprehensive background check and drug screening in accordance with the City's process and must utilize a City approved agent prior to entering the Center to begin employment and/ or delivery of services. Employment may be contingent upon satisfactory results as determined by the City. Cost of said tests shall be the CONTRACTOR'S.

#### **SECTION 9. HOURS OF OPERATION & COURTS USAGE**

- 9.1 The CONTRACTOR shall open and operate the Center for play from 8:00 A.M. to 9:00 P.M. every day of the year, with the exception of closures due to weather conditions or events of force majeure permitting, and certain holidays agreed upon by the CONTRACTOR and the City.
- 9.2 Any change in the hours of operation shall be at the City's sole option and discretion, and any request by CONTRACTOR for an increase or decrease in same shall be subject to the prior written approval of the City Manager or his designee.
- 9.3 The CONTRACTOR acknowledges and agrees to prioritize utilization of courts for public usage by restricting lesson courts not to exceed four (4) courts during peak hours of play (8:00 AM to 11:00 AM and 4:00 PM to 7:00 PM). Additional court usage for lessons, programs and clinics during non-peak hours shall be subject to the approval of the City. At no time shall more than 50% of all courts be utilized for private lessons or other specialized tennis programs until 10 minutes after any non-peak hour and there are no tennis patrons waiting for a court, without the prior written approval of the City.

## **SECTION 10. TENNIS FEES, CHARGES AND PROGRAMS & RELATED SERVICES TO BE PROVIDED**

- 10.1 Prices charged shall comply with the City's established fees for hourly tennis court play, annual permits, other specialized play and the youth tennis policy, and shall be in accordance with the information included in Exhibit "E," attached hereto.
- 10.2 The Contractor must comply with the fee schedule for the professional tennis instruction that offers the tennis patron a choice in instructor level and hourly fee commensurate with the instructor's level, as agreed upon and listed in Exhibit "F", attached hereto. Any change of this said fee and instructor levels shall be approved by the City prior to implementation of fees.
- 10.3 Fees for hourly court rentals, lessons, clinics, merchandise, equipment rental, racket stringing or gripping, and food and beverage sales and any other related items or services to be sold must be prominently posted at the Center at those location(s) where such fees are normally paid. All fees and charges shall be competitive with those charged by comparable public tennis centers in Miami-Dade and Broward Counties. Initial fees for programs, clinics and lessons are set forth in Exhibit "F" attached hereto.
- 10.4 The City shall approve in writing, in advance, any increase in fees from those currently set forth in Exhibit "F;" provided the CONTRACTOR shall have the right to increase fees in an amount equal to the amount of any sales and use tax increase enacted after the effective date of such exhibit or schedule without City's consent.
- 10.5 The CONTRACTOR agrees to provide the programs and additional services set forth in Exhibit "F". An implementation schedule of said services shall be provided by the CONTRACTOR within sixty (60) days of the Commencement Date. Said schedule and any modifications, additions or deletions to the list are subject to the prior approval of the City.
- 10.6 The CONTRACTOR shall be authorized to provide courts, free of charge, during professional tennis demonstrations, promotional events, clinics and lessons being offered to the public at no charge, subject to the prior written approval of the City.
- 10.7 Any print materials prepared by the CONTRACTOR for use of the Center shall have the approval of the City prior to printing. Materials must include the City designation/logo and appropriate ADA (Americans with Disabilities Act) disclaimer.

## **SECTION 11. ALTERATIONS, MAINTENANCE, AND REPAIRS & SECURITY**

### **11.1 Building and Facilities Alterations**

Without the City's prior written approval, CONTRACTOR may not make alterations or additions to the Center. In the event of an emergency to prevent injury to persons or property, CONTRACTOR shall use reasonable efforts to secure the affected area and will immediately notify the City's Property Management Division to advise of said emergency. At that time the City will assess the situation, further secure the area in question, and determine means and method of repairs.

Any other alterations or additions shall be made at the CONTRACTOR'S sole cost and expense and shall become the property of the City upon termination of this Agreement unless otherwise agreed to by the City Manager or his designee in writing. CONTRACTOR shall not have the right to create or permit the creation of any lien attaching to City's interest in the Center as a result of any such alterations or additions.

**11.2 Building(s) and Facilities Maintenance**

The City further acknowledges that the CONTRACTOR shall not be required to improve, repair, restore, refurbish, or otherwise incur any expense in improving or changing the condition of the Center if same requires the CONTRACTOR to exceed the threshold amount of \$1,000 per Occurrence, without the further participation or contribution of the City. Notwithstanding the forgoing, the City shall continue to maintain all major electrical, HVAC, plumbing and structural systems, at its sole cost. For purposes of this Agreement, "Occurrence" shall be defined to be a repair or series of repairs related to the same problem or incident.

CONTRACTOR shall not be responsible for major repairs to sports lighting, roofs, exterior walls, air-conditioning, plumbing, electrical system(s), or foundations. The City will be responsible for those costs in excess of said \$1,000.00 per occurrence.

The City will maintain the grass areas in those portions of Flamingo Park surrounding the Center, but not within the Center.

**11.3 Courts and Related Facilities Maintenance Standards**

The parties herein acknowledge, and CONTRACTOR agrees to be bound by the Minimum Maintenance Standards as delineated in Exhibit "G", attached hereto, which include Tennis Court Maintenance Standards (collectively, the "Maintenance Standards"). The City shall from time to time conduct inspections of the Center to determine compliance with Standards and submit its finding in writing to CONTRACTOR. The CONTRACTOR agrees to promptly respond to the City's findings in writing, addressing all findings including an action plan and time line for correcting any discrepancies identified in said findings. It is further understood that upon the request of the City, CONTRACTOR shall periodically, or upon the City's written request, provide the City Manager or his designee, with a maintenance report in a format approved by the City.

**11.4 Litter, Garbage and Debris Removal**

With respect to litter, garbage and debris removal, the CONTRACTOR shall provide, at its sole cost and expense, receptacles within the confines of the Center and shall provide a sufficient number of these receptacles for its own use and for the use of the public. Disposal of the contents of said receptacles and removal of litter, garbage and debris within the Center, shall be done on a daily basis, and shall be the sole responsibility of the CONTRACTOR. The CONTRACTOR shall be permitted to utilize the City's current trash removal procedures. The amount of trash being picked up shall be evaluated within 120 days of the Commencement Date and if, at that time it is found to exceed the level currently being disposed on the Center, the CONTRACTOR shall be assessed and agrees to pay as an operating



expense the actual cost of the disposal process including labor and dumping. The dumping or disposal of any refuse, discards, trash or garbage, generated by, or as a result of the operations on the Center, into any of the Miami Beach trash receptacles located within Flamingo Park, by the CONTRACTOR (including its staff and employees), shall be strictly prohibited unless previously agreed to by the City Manager or his designee.

**11.5 Equipment**

The CONTRACTOR must provide and maintain, at its own cost and expense, all materials, labor, and any and all equipment required to operate the Center. CONTRACTOR shall maintain said equipment during the term of this Agreement. In the event any of the CONTRACTOR'S equipment or materials are lost, stolen, or damaged, they shall be replaced or repaired at the sole cost and expense of the CONTRACTOR in no more than five (5) days from date of loss, or if not possible, within such time frame, as promptly as reasonably possible, but in no event to exceed fifteen (15) days.

**11.6 Orderly Operation**

The CONTRACTOR shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services for the Center. There shall be no living quarters nor shall anyone be permitted to live within the Center. CONTRACTOR shall make available all facilities within the Center under its control for examination during hours of operation by the City Manager or his designee.

**11.7 No Dangerous Materials**

The CONTRACTOR agrees not to use or permit at the Center the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Center shall be immediately removed.

Notwithstanding any contrary provisions of this Agreement, CONTRACTOR, after the Commencement Date, shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by CONTRACTOR, after the Commencement Date, but during the term of this Agreement, of any hazardous substance, or petroleum products on, under, in or upon the Center as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, CONTRACTOR shall have no liability for any violation arising or damage incurred as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection shall survive the termination or earlier expiration of this Agreement.

**11.8 Security**

The CONTRACTOR shall be responsible for and provide reasonable security

measures that may be required to protect the Center and any of the equipment, materials and facilities thereon. Under no circumstances shall the City be responsible for any stolen or damaged equipment, materials and supplies, nor shall the City be responsible for any stolen or damaged personal property of CONTRACTOR'S patrons, guests, invitees, and/or other third parties.

**11.9 Inspection**

The CONTRACTOR agrees that the Center and all facilities, equipment, and operations thereon may be inspected at any time during hours of operation by the City Manager or his designee, or by any other Municipal, County, State officer, or agency having responsibilities for inspections of such operations. The CONTRACTOR hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference (which interference, if by the City, must be reasonable) with the operations by any public agency or official in enforcing its or his duties or any laws or ordinances. Any such interference (which interference, if by the City, must be reasonable) shall not relieve the CONTRACTOR from any obligation hereunder.

**SECTION 12. INSURANCE**

CONTRACTOR shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement.

- a. Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for Center operations, products and contractual liability.
- b. Workers Compensation Insurance as required under the Laws of the State of Florida.
- c. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

The policies of insurance referred to above shall not be subject to cancellation or change except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date, CONTRACTOR shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the prior written approval of the City's Risk Manager. Should CONTRACTOR fail to obtain, maintain or renew the policies of insurance referred

to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by CONTRACTOR to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If CONTRACTOR fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

### **SECTION 13. INDEMNITY**

13.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, CONTRACTOR shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of CONTRACTOR, its subcontractor(s), agents, servants or employees in the performance of services under this Agreement unless such claim, demand or cause of action arises as a result of the City's gross negligence or willful misconduct.

13.2 In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, CONTRACTOR shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of CONTRACTOR not included in the paragraph in the subsection above and for which the City, its agents, servants or employees are alleged to be liable.

13.3 Subsections 13.1 and 13.2 shall survive the termination or expiration of this Agreement. Subsections 13.1 and 13.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.

13.4 **Subrogation**

The terms of insurance policies referred to in Section 12 shall preclude subrogation claims against CONTRACTOR, the City and their respective officers, employees and agents.

13.5 **Force Majeure.**

Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:

- a. fire which renders at least thirty percent (30%) of the cumulative facilities unusable and which is not caused by negligence of CONTRACTOR;
- b. Earthquake; hurricane; flood; act of God; civil commotion occurring at the Center during or in connection with any event; or other matter or condition of like nature; or

- c. Any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war.

The parties hereto acknowledge that CONTRACTOR'S obligations and benefits hereunder may be negatively affected by an event of Force Majeure. If an event of Force Majeure occurs during the term of this Agreement, and provided further that CONTRACTOR'S payment(s) to the City for that contract year is greater than the applicable percentage payment, then the City Manager or his designee, in his sole discretion, may extend the term of this Agreement for a reasonable period of time; provided, however, such extension shall take effect only if CONTRACTOR agrees to such extension.

**13.6 Labor Dispute**

In the event of a labor dispute which results in a strike, picket or boycott affecting the Center or operation described in this Agreement, CONTRACTOR shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been caused by illegal labor practices or violations by CONTRACTOR of applicable collective bargaining agreements and there has been a final determination of such fact which is not cured by CONTRACTOR within thirty (30) days.

**13.7 Waiver of Loss from Hazards**

The CONTRACTOR hereby expressly waives all claims against the City for loss or damage sustained by the CONTRACTOR resulting from fire, water, natural disasters/acts of God (e.g. hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 13.5 and Labor Dispute in Subsection 13.6 above, and the CONTRACTOR hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

**SECTION 14. DEFAULT AND TERMINATION**

Subsections 14.1 through 14.3 shall constitute events of default under this Agreement. An event of default by CONTRACTOR shall entitle City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 14.4. An event of default by City shall entitle CONTRACTOR to exercise any and all remedies described as CONTRACTOR'S remedies under this Agreement, including but not limited to those set forth in Subsection 14.5.

**14.1 Bankruptcy**

If either the City or CONTRACTOR shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency

laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

**14.2 Default in Payment**

In the event CONTRACTOR fails to submit any payment within five (5) days of its due date, there shall be a late charge of \$50.00 per day for such late payment, in addition to interest at the highest rate allowable by law (currently 12% per annum). If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after receipt of written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract; and may begin procedures to collect the Performance Bond or Alternative Security required in Section 4.1 herein.

**14.3 Non-Monetary Default**

In the event that CONTRACTOR or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event a defaulting party cures any default pursuant to this subsection, it shall promptly provide the other party with written notice of same.

**14.4 City's Remedies for CONTRACTOR'S Default**

If any of the events of default, as set forth in this Section, by CONTRACTOR shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to CONTRACTOR a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to CONTRACTOR. On the date so specified, CONTRACTOR shall then quit and surrender the Center to City pursuant to the provisions of Subsection 14.7. Upon the termination of this Agreement, all rights and interest of CONTRACTOR in and to the Center and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by CONTRACTOR under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond or Alternate Security required in Section 4.1 herein. In addition to the rights set forth above, City

shall have the rights to pursue any and all of the following:

- a. The right to injunction or other similar relief available to it under Florida law against CONTRACTOR; and or
- b. The right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from CONTRACTOR'S default.

14.5 If any of the events of default, as set forth in this Section, by the City shall occur, the CONTRACTOR may, after notice (if required) and the expiration of the cure periods, as provided above, at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall CONTRACTOR specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, CONTRACTOR shall quit and surrender the Center to City pursuant to the provisions of Subsection 14.7.

14.6 Suspension of Agreement Due to Closure of Center

The CONTRACTOR acknowledges that the City intends to develop a schedule of capital improvements for the Center, which may entail a closure of all, or a portion of the Center, at the City Commission's sole discretion. In the event that the City closes down the Center for the purpose of undertaking a capital improvement plan thereon, then the parties agree this Agreement may be suspended until the capital improvements are completed and the Center is re-opened, without cause and without penalty to either party. The City further agrees, at its sole discretion, to evaluate the option of making available alternative City owned tennis courts located in various parks to be utilized by the CONTRACTOR to continue the provision of established programs and services, based on a reduced scope of services and fee structure to be negotiated as a separate Agreement and approved by the City Commission; but in no event shall City be obligated hereunder to do so.

Such a suspension shall become effective upon ninety (90) days prior written notice to CONTRACTOR. CONTRACTOR, as a result of the closure of the Center, as provided herein, shall upon receipt of notice from the City, coordinate said suspension with the City's Parks and Recreation Department, such that the services contemplated herein in shall be continued to be provided up to the closure of the Center and an orderly transition occurs.

In the event of suspension of the Agreement pursuant to this Subsection, CONTRACTOR herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in or damages for interruption of services or interference in its tennis operations for tennis equipment rental, pro shop sales, food and beverage sale/service, and tennis equipment rental).

#### **14.7 Surrender of Center**

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, CONTRACTOR shall surrender the Center in the same condition as the Center was prior to the commencement of this Agreement, reasonable wear and tear, and City maintenance and repair obligations, excepted. CONTRACTOR shall remove all its equipment, fixtures, personal property, etc. upon five (5)-business days written notice from the City Manager or his designee unless a longer time period is agreed to by the City. The CONTRACTOR'S obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Center after termination of the Agreement without the City's approval shall constitute trespass by the CONTRACTOR, and may be prosecuted as such. In addition, the CONTRACTOR shall pay to the City two hundred dollars (\$200) per day as liquidated damages for such breach of this Agreement.

#### **SECTION 15. ASSIGNMENT**

Except as otherwise provided in this subsection, CONTRACTOR shall not assign; sublease; grant any concession or license; permit the use of by any other person other than CONTRACTOR; or otherwise transfer all or any portion of this Agreement and/or of the Center (all of the forgoing are herein after referred to collectively as "transfers"), without the prior written consent of the City, which consent shall not be unreasonably withheld.

If there is a change in control of CONTRACTOR, then any such change in control shall constitute a "transfer" for purposes of this Agreement and shall be approved by the City Commission prior to consummation of such change in control. "Change in control", for purposes hereof, shall mean a change of the ownership, directly or indirectly, of greater than 10% of the voting or ownership interest or right to profits in such CONTRACTOR, by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise; provided that the foregoing shall not be deemed to include (i) a pledge or collateral assignment of the profits of CONTRACTOR in connection with any financing, provided such pledge or collateral assignment is subordinate to the rights of the City to the fees payable to the City pursuant to subsection 4.2.1 hereof; (ii) any transfer to other owners of CONTRACTOR or to trusts the beneficiaries of which are any owner(s) of CONTRACTOR or member(s) of their immediate family; or (iii) a change in the ownership of CONTRACTOR through a registered public offering of shares in CONTRACTOR ((i), (ii) and (iii) above collectively are referred to herein as the "Transfer Exclusions"). Except for the Transfer Exclusions, any change of the ownership, directly or indirectly, of 10% or less of the voting or ownership interest or right to profits in such CONTRACTOR (a "Minor Change"), by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise, shall be subject to the approval of the City Manager or his designee.

CONTRACTOR shall notify the City of any proposed transfer, and shall notify the City Manager or his designee of any proposed Minor Change, prior to consummation of same and the City or the City Manager or his designee, as applicable, shall respond within thirty (30) days. In the event that any such transfer or Minor Change is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer or Minor Change made without complying with this Section shall

be null, void, and of no effect and shall constitute an act of default under this Agreement. Notwithstanding any such consent, or any permitted transfer or Minor Change under any provision of this Section, unless expressly released by the City, CONTRACTOR shall remain jointly and severally liable (along with each approved transferee, who shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred), and the City shall be permitted to enforce the provisions of this Agreement directly against CONTRACTOR or any transferee of the CONTRACTOR without proceeding in any way against any other person.

## **SECTION 16. SPECIAL EVENTS**

**16.1** CONTRACTOR'S proposed uses, as defined in Section 3 herein, contemplates the production, promotion or sponsorship by the CONTRACTOR of **tennis related special events** at the Center. For purpose of this subsection 16.1 only, CONTRACTOR'S "Special Event" shall mean any event in which CONTRACTOR shall dedicate, and close to the general public, 50% or more of the Center's tennis courts. In the event CONTRACTOR does produce, promote or sponsor a Special Event at the Center, other than those provided for in this Agreement; it shall abide by the City's Special Events Permit Requirements and Guidelines. For any use, other than those provided for in this Agreement, a Special Events Permit may be required, and if required, shall be obtained through the City's Office of Arts, Culture and Entertainment. The City Manager's authorization must be obtained for any such Special Event. The City Administration shall evaluate requests for Special Events Permits on a case by case basis, in accordance with the City's Special Event Permit Requirements and Guidelines.

### **16.2 City Special Events**

Notwithstanding Subsection 16.1 above, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to utilize the Center for City produced tennis related special events and/or other City-produced special events productions. In such cases, the City will coordinate with the CONTRACTOR to cooperatively produce such events. The City shall make its best effort to negotiate with CONTRACTOR but if unsuccessful the CONTRACTOR shall cease and desist operations during the term of, and in the area of the special event and/or production. If the CONTRACTOR is not required to close, or chooses to remain open without interference to the special event and/or production, CONTRACTOR agrees to cooperate with the City. If the CONTRACTOR is allowed to remain open during special events and/or productions, the CONTRACTOR may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff, approved by the City, that the CONTRACTOR has available for the public on a normal day, 365 days per year. Such equipment or staff shall not be increased or altered during special events and/or productions without the prior written permission of the City Manager or his designee. To the extent that the normal daily complement of equipment and staff is displaced by the special event and/or production, the CONTRACTOR may reallocate such displaced equipment and staff on a pro-rata basis within the Center not being utilized by the special event.



## **SECTION 17. NO IMPROPER USE**

The CONTRACTOR will not use, nor suffer or permit any person to use in any manner whatsoever, the Center or any facilities herein for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or Municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The CONTRACTOR will protect, indemnify, and forever save and keep harmless the City, its agents, employees and contractors from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the CONTRACTOR, or any of its subcontractors, employees or agents. In the event of any violation by the CONTRACTOR or if the City or its authorized representative shall deem any conduct on the part of the CONTRACTOR to be objectionable or improper, CONTRACTOR shall be deemed to be in default of this Agreement should CONTRACTOR fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving written notice of the nature and extent of such violation, conduct, or practice.

## **SECTION 18. NOTICES.**

All notices, consents, waivers, directions, requests or other instruments of communications provided for under this Agreement, shall be deemed properly given if, and only if, delivered personally or sent by registered or certified U.S. mail, postage pre-paid, as follows:

### **IF TO THE CITY:**

Robert C. Middaugh  
Assistant City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

### **With copies to:**

City Attorney  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Kevin Smith, Director,  
Parks and Recreation  
2100 Washington Avenue  
Miami Beach, Florida 33139

### **IF TO CONTRACTOR:**

Mr. Tom Mar, President  
Green Square, Inc.  
4500 Royal Palm Avenue  
Miami Beach, Florida 33140

### **With copies to (which shall Not constitute notice:**

Louis R. Montello, Esquire  
Montello & Kenney, P.A.  
777 Brickell Avenue, Suite 1070  
Miami, Florida 33131

The CONTRACTOR and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

## **SECTION 19. LAWS**

### **19.1 Compliance**

CONTRACTOR shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

### **19.2 Governing Law**

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. In case of any inconsistency between the terms of this Agreement, and any applicable general or special law, said general, special law shall prevail.

### **19.3 Equal Employment Opportunity**

Neither CONTRACTOR nor any affiliate of CONTRACTOR performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability, as defined in Title I of ADA.

CONTRACTOR will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

### **19.4 No Discrimination**

The CONTRACTOR agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in its employment practices or in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Center. All services offered at the Center shall be made available to the public, subject to the right of the CONTRACTOR and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the Center.

Pursuant to Sections 62-90 and 62-91, of Chapter 62, of the Miami Beach City Code entitled "Human Relations", CONTRACTOR, by executing this Agreement, certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap.

## **SECTION 20. MISCELLANEOUS**

### **20.1 No Partnership**

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and CONTRACTOR.

**20.2 Modifications**

This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. CONTRACTOR acknowledges that no modification to this Agreement shall be binding on the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his designee.

**20.3 Complete Agreement.**

This Agreement, together with all exhibits attached hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to the matters as contemplated herein.

**20.4 Headings**

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

**20.5 Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**20.6 Clauses**

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration or benefits that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

**20.7 Severability**

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement shall not be affected thereby and this Agreement as so modified shall remain in full force and effect.

**20.8 Right of Entry**

The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Center for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

**20.9 Not a Lease**

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the CONTRACTOR, that CONTRACTOR is a contractor providing management services for the City and not a lessee; and that the CONTRACTOR'S right to manage and operate the Center for the City shall continue only so long as this Agreement remains in effect.

**20.10 Signage**

CONTRACTOR shall provide, at its sole cost and expense, any required signs on the Center. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by CONTRACTOR at the Center shall be subject to the prior written approval of the City as to size, shape and placement of same.

**20.11 Conflict of Interest**

CONTRACTOR shall perform its services under this Agreement and conduct the professional tennis management and operations contemplated herein, in a manner so as to show no preference for other tennis operations/facilities owned, operated, managed, or otherwise controlled by CONTRACTOR with regard to its responsibilities pursuant to this Agreement.

**20.12 Reasonableness**

Notwithstanding anything to the contrary in this Agreement, including but not limited to references to "sole option" or "sole discretion" or words of similar meaning, in each instance in which the approval or consent or other action of the City Commission or the City Manager or his designee is allowed or required in this Agreement, such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

**20.13 Procedure for Approvals and/or Consents**

In each instance in which the approval or consent of the City Manager or his designee is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or his designee by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or his designee is allowed or required in this Agreement, CONTRACTOR shall send to the City Manager a written request for approval or consent (the "Approval Request"). The City Manager or his designee shall have up to sixty (60) days from the date of Approval Request to provide written notice to CONTRACTOR approving of, consenting to or disapproving of the request. However, the City Manager or his designee's failure to consider such request within this time provided shall not be deemed a waiver, nor shall CONTRACTOR assume that the request is automatically approved and consented to. The Subsection shall not apply to approvals required herein by the Mayor and City Commission.

**20.14 No Waiver**

No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.

**20.15 No Third Party Beneficiary**

Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subcontractors, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

The City desires to enter into this Agreement placing the operation and management of the Center in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of \$100,000.00. CONTRACTOR hereby expresses its willingness to enter into this Agreement with a \$100,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$100,000.00, the receipt of which is hereby acknowledged, the City shall not be liable to CONTRACTOR for damages to CONTRACTOR in an amount in excess of \$100,000.00, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

**This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. CITY AND CONTRACTOR HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONTRACTOR MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CENTER.**

423-07  
City Attorney Date

**EXHIBIT "A"**

**CONTRACTOR'S SCHEDULE TO PRICE  
PROPOSAL**

# GREEN SQUARE SCHEDULE TO PRICE PROPOSAL

## Proposal Summary

**PROGRAMS:** The Bollettieri (Green Square, Inc.) proposal stated that they will pay the greater of the two to the City as part of a revenue sharing proposal;

### Gross Revenues

### Percentage of Revenues

\$500,000 or less	10%
+ \$500,000 to \$1 million	15%
+ \$1 million	18%
or a minimum monthly fee of \$4,000 for the Flamingo Park tennis center.	

**EXHIBIT "B"**

**SITE MAP OF PREMISES INCLUDED IN  
AGREEMENT**